



Boardman, Suhr, Curry & Field
ATTORNEYS AT LAW

410 Firststar Plaza
One South Pinckney Street
P.O. Box 927
Madison, WI 53701-0927

Telephone (608) 257-9521
Facsimile (608) 283-1709

DOCKET FILE COPY ORIGINAL

RECEIVED
JAN 6 1998
FEDERAL COMMUNICATIONS COMMISSION

RHONDA R. JOHNSON
Direct Dial Number (608) 283-1724
E-mail: rjohnso@bscf.com

January 5, 1998

BY FEDERAL EXPRESS

Ms. Magalie Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: CC Docket No. 97-219

Dear Secretary Salas:

Enclosed for filing on behalf of the City of Rice Lake, Wisconsin, are the original and six copies of the City of Rice Lake's Reply Comments on Petition for Preemption in the above-captioned matter, together with a Certificate of Service. Also enclosed is an additional copy of the Reply Comments. Please date-stamp this additional copy and return the same to me in the envelope provided.

Very truly yours,

BOARDMAN, SUHR, CURRY & FIELD
By

Rhonda R. Johnson

RRJ:jw

Enclosures

cc: Service List
Curtis Snyder

No. of Copies rec'd 0 + 6
List A B C D E

RECEIVED
JAN 6 1998
FCC

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of)	
)	
CHIBARDUN TELEPHONE COOPERATIVE, INC.)	
CTC TELCOM, INC.)	
)	CC Docket No. 97-219
Petition for Preemption Pursuant to)	
Section 253 of the Communications Act --)	
City of Rice Lake, Wisconsin)	

TO: The Commission

**CITY OF RICE LAKE'S REPLY COMMENTS ON
PETITION FOR PREEMPTION**

BOARDMAN, SUHR, CURRY & FIELD

Anita T. Gallucci, State Bar No. 1006728
Rhonda R. Johnson, State Bar No. 1027696
1 South Pinckney Street, Suite 410
P.O. Box 927
Madison, WI 53701-0927
(608) 257-9521
Facsimile: (608) 283-1709
Attorneys for the City of Rice Lake, Wisconsin

January 5, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

RECEIVED
JAN 6 1998
FCC MAIL ROOM

In the Matter of)
)
CHIBARDUN TELEPHONE COOPERATIVE, INC.)
CTC TELCOM, INC.)
)
Petition for Preemption Pursuant to)
Section 253 of the Communications Act --)
City of Rice Lake, Wisconsin)

CC Docket No. 97-219

TO: The Commission

**CITY OF RICE LAKE'S REPLY COMMENTS ON
PETITION FOR PREEMPTION**

BOARDMAN, SUHR, CURRY & FIELD

Anita T. Gallucci, State Bar No. 1006728
Rhonda R. Johnson, State Bar No. 1027696
1 South Pinckney Street, Suite 410
P.O. Box 927
Madison, WI 53701-0927
(608) 257-9521
Facsimile: (608) 283-1709
Attorneys for the City of Rice Lake, Wisconsin

January 5, 1998

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. COMMENTERS PROVIDE NO GROUNDS FOR THE COMMISSION TO REVIEW CHIBARDUN'S PETITION	4
II. COMMENTERS PROVIDE NO NEW EVIDENTIARY OR LEGAL GROUNDS FOR THE COMMISSION TO GRANT PREEMPTION RELIEF	6
A. The City Has Not Prohibited Or Materially Impaired Entry Into The Telecommunications Market	8
B. The City Has Not Imposed Any Third Tier Regulation	9
C. The City Manages Its Rights-Of-Way In A Non-discriminatory and Competitively Neutral Manner	9
D. Chibardun's Petition Is Based on Faulty Policy	10
III. REPLIES TO SPECIFIC COMMENTERS' CLAIMS	11
A. Reply to GTE	11
B. Reply to USTA	12
C. Reply to MCI	14
D. Reply to Burnell Hanson	15
CONCLUSION	16

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

RECEIVED
JAN 6 1998
FCC MAIL ROOM

In the Matter of)
)
CHIBARDUN TELEPHONE COOPERATIVE, INC.)
CTC TELCOM, INC.)
)
Petition for Preemption Pursuant to)
Section 253 of the Communications Act --)
City of Rice Lake, Wisconsin)

CC Docket No. 97-219

TO: The Commission

**CITY OF RICE LAKE'S REPLY COMMENTS ON
PETITION FOR PREEMPTION**

INTRODUCTION

The City of Rice Lake, Wisconsin ("City") submits these Reply Comments pursuant to the October 20, 1997 and subsequent Orders that the Federal Communications Commission ("Commission") issued to address the October 10, 1997 Petition for Preemption pursuant to Section 253 ("Petition") that Chibardun Telephone Cooperative, Inc. and CTC Telcom, Inc. (collectively, "Chibardun") filed in the above-captioned proceeding. These Reply Comments are provided specifically to address Comments that the United States Telephone Association ("USTA"), AT&T Corp. ("AT&T"), MCI Telecommunications Corporation ("MCI"), GTE Service Corporation ("GTE") and Burnell Hanson submitted in

response to Chibardun's Petition.¹ As shown below, Commenters provide nothing new in the way of evidentiary support or legal argument to support a claim for preemption in this matter, and their challenges to the City's actions fail for the same reasons as those raised by Chibardun. Thus, for the reasons set forth in the City's December 2, 1997 Comments filed in this proceeding and for the added reasons set forth below, Chibardun's Petition should be dismissed or denied.

SUMMARY OF ARGUMENT

A review of the submissions that Commenters filed in this proceeding confirms that this case does not warrant an exercise of Commission preemption authority. To the contrary, Commenters' submissions are based on the incorrect assumption that the allegations Chibardun raised in its Petition are true, and do nothing more than rehash the arguments that Chibardun raised attempting to persuade the Commission to issue a preemption order under Section 253(d).² Since Commenters provide no evidentiary support, no legal grounds and no other reason to justify such action, their arguments should be rejected for the same reasons as the arguments Chibardun raised.

In the first instance, Commenters provide absolutely no bases on which the Commission could legally decide to exercise authority to review the City's actions for

¹ The USTA, AT&T, MCI, GTE and Burnell Hanson will be collectively referred to herein as "Commenters." In addition to Commenters, CMMT Communities ("CMMT") also filed comments in this proceeding and asked that the Commission reject Chibardun's claims and deny the Petition. See Comments of CMMT, p. 2. The City agrees with CMMT's position and therefore does not provide any additional comments in reply to CMMT.

² 47 U.S.C. §253(d).

possible preemption under Section 253(d). Nor could they, given the text of Section 253 and the legislative history behind that provision's enactment in the Telecommunications Act of 1996. As the City set forth in its December 2, 1997 Comments, Congress has made clear that the Commission's preemption authority under Section 253(d) does not extend to state and local requirements that relate to management of or compensation for public rights-of-way use, and the actions Chibardun challenged in its Petition fall squarely within those protected categories. See City of Rice Lake's Comments, pp. 24-29. Furthermore, even if Section 253(d) authorized preemption of local rights-of-way management and compensation requirements, Commenters provide no justifiable reason for the Commission to exercise such authority in the present case where Chibardun's claims are premature and there was no injury to provide the company with standing to raise its claims.

Moreover, Commenters provide nothing new in the way of legal or evidentiary grounds for the Commission to grant Chibardun's Petition. With no evidentiary support, Commenters incorrectly assume the truth of Chibardun's allegations and, based on those incorrect assumptions, argue that preemption is warranted here. The Commission should not exercise preemption authority based on the incomplete and, in many instances incorrect, "factual" record that underlies Chibardun's Petition. As reflected by the evidence the City presented with its December 2, 1997 Comments, the City has not acted to prohibit or effectively prohibit competitive entry into its telecommunications market, and has applied its rights-of-way management authority to all telecommunications providers in a competitively neutral and nondiscriminatory manner.

Finally, Commenters rest their arguments on the same faulty reasoning that underlies Chibardun's Petition. As Chibardun and Commenters would have it, the way in which a municipality managed and received compensation for use of its rights-of-way prior to the emergence of competition is somehow locked in stone. That simply cannot be true. Since competitive entry into markets that were previously monopoly controlled necessarily raises new and different issues surrounding rights-of-way compensation and management, it is entirely reasonable (and in many cases essential) that a municipality revise its pre-existing management practices. Thus, in the event the Commission reaches the "competitively neutral/non-discriminatory" question under Section 253(c), that question should not be answered by comparing post-competition with pre-competition requirements or regulations. Rather, the Commission should determine whether, on a forward-looking basis, the City's regulatory measures are nondiscriminatory and competitively neutral. The theory promoted by Chibardun and Commenters is based on faulty and detrimental policy which the Commission should not condone.

These issues are discussed in more detail below, followed by argument specific to particular Commenters' submissions.

ARGUMENT

I. COMMENTERS PROVIDE NO GROUNDS FOR THE COMMISSION TO REVIEW CHIBARDUN'S PETITION.

In its December 2, 1997 Comments, the City explained that Chibardun's Petition fails procedurally because the issues Chibardun raised are not subject to Commission review.

City of Rice Lake's Comments, pp. 24-32. The City specifically pointed to two key reasons why Chibardun's Petition was procedurally improper. *Id.* First, the issues Chibardun raised are not within the review and preemption authority that Congress conferred on the Commission. Second, even if they were within the Commission's review authority, Chibardun's claims are not ripe for consideration and are based on arguments the company lacks standing to raise. Commenters provide no argument to dispel these procedural defects in the Petition. In fact, Commenters completely ignore the fact that the Commission does not have preemption authority under Section 253(d) to address Chibardun's claims and, except for GTE, ignore the premature nature of Chibardun's Petition.

With respect to the jurisdictional problems that underlie Chibardun's Petition, Commenters do not address the limited scope of Section 253(d), or the lack of authority the Commission has under that provision to preempt state or local requirements relating to public rights-of-way management and compensation matters. The USTA, however, tacitly concedes that the Commission's authority is limited, as it states in its Comments that the Commission must "preempt state and local laws and regulations which violate Section 253(a) and (b)." Comments of the USTA, p. 3. Markedly absent from the USTA's claim is preemption of local requirements that fall within subsection (c). The USTA's tacit acknowledgment of Section 253(d)'s limitation is correct and necessarily flows from the language and structure of Section 253, as well as the legislative history underlying enactment of that statute. Since there has been, and could be, no claim that the actions Chibardun challenges fall outside of

the management and compensation matters that are protected by Section 253(c)'s safe harbor, the Commission should dismiss the Petition for lack of jurisdiction.

With respect to the premature nature of Chibardun's Petition, the City described in its December 2, 1997 Comments how Chibardun could make no legitimate claim of injury resulting from City actions and therefore lacked standing to raise the hypothetical and premature claims that it raised. City of Rice Lake's Comments, pp. 29-32. The only Commenter that addressed this issue was GTE. Like the City, GTE illustrated why Chibardun's Petition was premature. See Opposition of GTE to Petition for Section 253 Preemption, pp. 6-8. The City agrees with GTE's reasons and supports its assertion that the Commission should deny the Petition as premature.³

Simply put, given the premature nature of Chibardun's Petition and the fact that the company's claims are not within the Commission's preemption jurisdiction under Section 253(d), the Petition should be dismissed or denied without further review.

II. COMMENTERS PROVIDE NO NEW EVIDENTIARY OR LEGAL GROUNDS FOR THE COMMISSION TO GRANT PREEMPTION RELIEF.

One of the main problems with Commenters' filings is that they are based on the incorrect assumption that the "factual" allegations raised in Chibardun's Petition are true. For instance, the USTA spends four pages of its comments going through its interpretation

³ Although the City agrees with GTE's recognition that Chibardun's claims are premature, it does not agree with arguments GTE raised that are extraneous to this proceeding or with the company's assessment of whether provisions that may be included in a future ordinance comport with Section 253(a). See Opposition of GTE, pp. 9-10. These issues are discussed in Section III (A) below.

of Section 253 and, in one broad statement, makes the unsubstantiated claim that “[t]he regulations described in the Petition, and as applied to Chibardun, bear no relationship to the management of public rights-of-way identified in Section 253 of the Act, are contrary to the intent of Congress, and inconsistent with prior Commission decisions.” Comments of the USTA, p. 5. Completely absent from the USTA’s Comments, however, is any evidence or reasoning to support such a claim.

Similarly, AT&T assumes the truth of Chibardun’s claims and attempts to raise legal arguments based on that faulty assumption. See Comments of AT&T, p. 1, note 1. For instance, AT&T apparently relies on Chibardun’s claims to suggest that because of the License Agreement and Interim Ordinance, “the City has constructed obstacles to the provision of local exchange service that apply only to new entrants.” Id. at p. 4. See also Comments of MCI (incorrectly assuming that the City’s License Agreement “is anticompetitive and discriminatory because it imposes far more onerous and expensive obligations upon new entrants than the existing Rice Lake Code imposes on either GTE or Marcus”); Comments of Burnell Hanson (incorrectly assuming that the Rice Lake City Council “has prevented Chibardun from doing business in Rice Lake”). None of these assumptions is based on anything more than Chibardun’s unsubstantiated claims of what took place. In fact, the evidence the City submitted with its Comments confirms that Chibardun’s claims and Commenters’ assumptions are incorrect. The Commission should therefore give no weight to Commenters’ arguments, recognizing that they are based on an unsubstantiated and incorrect portrayal of the events underlying Chibardun’s Petition.

A. The City Has Not Prohibited Or Materially Impaired Entry Into The Telecommunications Market.

A close look at Commenters' arguments illustrates they are insufficient to justify preemption. For instance, the City showed in its December 2, 1997 Comments that there has been no prohibition⁴ or material impairment of Chibardun's ability to provide telecommunications services within the City. See Rice Lake's Comments, pp. 35-51. In contrast to Chibardun's claim and Commenters' assumptions, the City sought to facilitate competition in Rice Lake by quickly offering Chibardun the opportunity to go forward with construction under a negotiated License Agreement. The fact that the City did not "rubber stamp" excavation permits within the short time frame Chibardun wanted or grant the permits without determining that the proposed activities comported with basic rights-of-way management principles does not amount to a "denial," "prohibition" or "effective prohibition" on entry.

A finding to the contrary would for all practical purposes eliminate the City's authority to implement regulatory measures that underlie its rights-of-way management duties. It would be detrimental and contrary to Congress' principles set forth in the Telecommunications Act of 1996 for the Commission to adopt a policy that telecommunications providers are entitled to access rights-of-way without municipal review

⁴ As GTE recognized in its Comments, Chibardun made no claim that the City prohibited its entry into the Rice Lake market and that the sole question under Section 253(a) is whether there has been an effective prohibition. See Opposition of GTE to Petition for Section 253 Preemption, p. 5.

of their proposed actions. The Commission should therefore find that there has been no prohibition or effective prohibition on Chibardun's entry into the Rice Lake market.

B. The City Has Not Imposed Any Third Tier Regulation.

The City also showed in its Comments that the terms and conditions set forth in the City's proposed License Agreement and in the Interim Ordinance did not impose any "third tier" requirements or fall outside of Section 253(c)'s safe harbor. Id. at pp. 51-57. The City specifically illustrated how each of the actions Chibardun challenged in its Petition fit squarely within the City's regulatory authority which is preserved under Section 253(c). Id. The City acted to preserve its right-of-way management and compensation interests but did not seek to regulate either the relationship between Chibardun and other service providers or the conditions under which Chibardun would provide service to the public. Id. Commenters make no showing to the contrary. There simply is no substance to any claim by Chibardun or Commenters that the City impermissibly imposed or sought to impose any "third tier" regulation.

C. The City Manages Its Rights-Of-Way In A Non-discriminatory and Competitively Neutral Manner.

The City also showed in its Comments that it exercised its rights-of-way management and compensation authority in a non-discriminatory and competitively neutral manner, consistent with Section 253(c). Id. at pp. 57-61. With respect to this issue, Commenters' claims to the contrary suffer from the same incorrect assumptions and faulty legal interpretations as Chibardun's Petition. First, Commenters incorrectly accept as true

Chibardun's claims that the City's means of regulating rights-of-way does not apply to all telecommunications service providers. With respect to the proposed License Agreement terms, the City has proven through specific action that incumbents as well as competitive entrants would be offered substantially identical terms for proceeding with rights-of-way activities pending adoption of a new rights-of-way ordinance. The fact that the City provided a substantively identical document to the incumbent cable provider, Marcus Cable, confirms its intent and shows that it has not discriminated against competitive providers. Commenters' and Chibardun's claims to the contrary are wrong.

This is true with respect to the Interim Ordinance as well. On its face, that ordinance applies to all rights-of-way users and requires all such users to get Common Council approval for excavation permits sought for projects valued at \$50,000 or more. On its face, the Interim Ordinance does not discriminate in who it applies to. Nor has the City applied the ordinance in a discriminatory manner. As with the proposed License Agreement, the City applied the Interim Ordinance to an incumbent, Marcus Cable, further illustrating that Chibardun's and Commenters' claims of discrimination are without merit.

D. Chibardun's Petition Is Based on Faulty Policy.

In addition to the factually incorrect premises underlying Chibardun's Petition and Commenters' filings, is a detrimental policy that these parties promote and suggest this Commission should adopt. Like Chibardun, Commenters rest much of their arguments on the theory that the City's regulations must remain static over time and that because an incumbent provider (GTE or Marcus Cable) has been subject to the earlier Rice Lake Code

provisions that were put in place before telecommunications competition came to the City, the City could never change its regulations to respond to issues raised by new and additional rights-of-way uses. The fact that the City recognized that its earlier regulations may not have been sufficient in a context where there are or could be multiple competing users, and that it determined it needed to revise its regulations to address these new issues, should not be seen as grounds for a discrimination claim. Rather, it should be recognized as a reasonable measure on the City's part to protect and effectuate its rights-of-way management and compensation interests. Thus, to the extent there must be any analyses regarding discrimination and competitive neutrality, the question should not be addressed by comparing pre-competition practices with post-competition practices. Rather, it should be addressed by determining whether, on a forward-looking basis, the City's regulations are nondiscriminatory and competitively neutral. Since the evidence confirms that the City is applying its regulations to all rights-of-way users, the answer should be simple: the City has not discriminated against Chibardun.

III. REPLIES TO SPECIFIC COMMENTERS' CLAIMS.

In this section, the City responds to specific issues that were raised by particular Commenters.

A. Reply to GTE.

While GTE opposes Chibardun's Petition on grounds that it is premature, it also includes in its comments discussion that is well outside of this proceeding. For instance, GTE includes in its filing an explanation of why it favors "state-wide standards" for rights-

of-way regulation and “cost-based compensation” to local governments for rights-of-way use. See Opposition of GTE, p. 4. These are not matters raised or even tangentially at issue in this proceeding. The Commission should confine its review only to the specific questions raised.

In addition, GTE also asserts a position that certain provisions of the “anticipated permanent ordinance” would be inconsistent with Section 253(a). Id. at pp. 9-10. In the first instance, since there has been no permanent ordinance enacted, the Commission ought not render a decision on or even address GTE’s hypothetical claims. More importantly, however, it is unclear from GTE’s Comments what its bases for challenging the provisions are other than that in GTE’s opinion they are unreasonable. While such an opinion is not surprising from a provider with an interest in minimizing its regulatory obligations, it is not a basis for preemption. What is clear is that all of the provisions GTE complains of are reasonable rights-of-way management and compensation provisions that are within the City’s authority to adopt, and that there has been absolutely no evidence submitted to show how such provisions could constitute a prohibition or material inhibition on competitive entry into the telecommunications market. GTE’s suggestion that anticipated ordinance provisions may violate Section 253(a) is groundless.

B. Reply to USTA.

In addition to the reply arguments set forth above, the City also takes specific issue with the description of Section 253 that the USTA provides in its Comments. The USTA incorrectly suggests that state and local governments are prohibited from imposing regulatory

requirements that “interfere with the ability of any entity to provide interstate and intrastate telecommunications services.” Comments of the USTA, p. 3. This is not the standard the Commission has enunciated. As set forth in its City of Troy decision, the test under Section 253(a) is whether an action “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” In the Matter of TCI Cablevision of Oakland County, Inc., FCC CSR-4790, ¶¶98, 101 (released September 1997).

The USTA also incorrectly states that where local governments impose regulatory requirements “that are otherwise not barriers to entry, they must be applied on a competitively neutral basis” to withstand preemption under Section 253(d). Comments of the USTA, p. 3. This, too, is contrary to the Commission’s prior interpretation of Section 253. In In the Matter of Silver Star Telephone Co., Inc., FCC 97-336 (released September 24, 1997), the Commission described the relationship between Sections 253(a) and 253(b), and made clear that this latter provision is an “exception” to Section 253(a)’s proscription. The Commission specifically determined that even if a challenged action violates Section 253(a), the action is not preemptable if it satisfies the provisions of Section 253(b).⁵ Thus, contrary to the USTA’s suggestion that a local government action must meet the requirements of Section 253(a), as well as the requirements of Section 253(b) or 253(c), the

⁵ The USTA raises its argument in the context of Section 253(b), but would assumably make the same argument in reference to Section 253(c), the section at issue in this proceeding.

Commission has already determined that even if a prohibition on entry exists in violation of Section 253(a), the latter subsections provide a safe harbor under which state and local governments may act.

C. Reply to MCI.

In addition to the reply arguments set forth above, the City takes specific issue with MCI's challenge to Section 14 of the License Agreement. With no evidence to support its claims, MCI contends that the clause imposes a processing fee that is "unreasonable, excessive, and not competitively neutral" and that the fee will "deter new entrants from even contemplating operating competitive telecommunications facilities in Rice Lake." Comments of MCI, p. 3. MCI also takes issue with the provision in Section 14 which requires reimbursement to the City for costs incurred in administering public rights-of-way and suggests that such provision violates the disclosure requirement contained in Section 253(c). Id.

In the first instance, MCI fails to recognize that the License Agreement was not a final document but was subject to negotiations which Chibardun decided not to enter into.⁶ Not only could the "public disclosure" requirement contained in Section 253(c) not arise before the City had opportunity to even determine its costs, but it is completely unreasonable to expect such disclosure at the preliminary stages at which Chibardun and the City were working. Nor could the City be expected to calculate fees after Chibardun withdrew its

⁶ Specific arguments and evidence confirming this are set forth on pages 18-20 and 30-31 of the City's December 2, 1997 Comments.

permit applications. Simply put, the City could not have breached any duty to disclose fees which had not yet been determined and which had not been imposed on any entity.

With respect to MCI's remaining challenges to Section 14, the City must again point out the lack of evidentiary support for any claim of excessiveness or unreasonable impact and remind the Commission that the management and compensation for rights-of-way use is a matter confined to the City's regulatory authority under Section 253(c).

D. Reply to Burnell Hanson.

With respect to Burnell Hanson's Comments, the City has no dispute that telecommunications competition is welcomed in Rice Lake. It does, however, dispute Mr. Hanson's statement that "[f]or reasons unclear to our residents, the Rice Lake City Council has prevented Chibardun from doing business in Rice Lake." See Letter of Burnell Hanson. That statement is unsubstantiated and untrue.

In the first instance, the meetings of both the Rice Lake Cable Commission and the Rice Lake City Council were noticed and conducted in open session for the public and were also broadcast on public access television.⁷ See e.g., City of Rice Lake Comments, pp. 10-12, and the supporting Affidavit of Mick Givens, ¶¶3-7, 10, 12, 15, 20. Thus, there is little basis for Burnell Hanson to claim that the City acted "for reasons unclear to . . . residents." Regarding Mr. Hanson's claim of Chibardun being "prevented" from doing business in Rice

⁷ The City described in its December 2, 1997 Comments how Chibardun's representatives sought to have the Cable Commission meetings closed to the public and how the City, to comply with the state's open meetings law, determined that the meetings had to remain open to the public. See City of Rice Lake Comments, pp. 10-12.

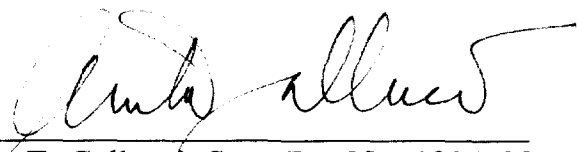
Lake, the City set forth in its December 2, 1997 Comments and above how it worked with Chibardun to try to allow the company to proceed with rights-of-way construction and excavation while at the same time trying to ensure that such activities would take place in a safe and orderly manner. The only "delay" or "prevention" that occurred was a result of Chibardun's unwillingness to work with the City and its unreasonable demands that it be allowed to proceed on an immediate basis without meeting basic regulatory requirements. No "delay" or "prevention" is attributable to the City.

CONCLUSION

For all the reasons set forth above and in the City's December 2, 1997 Comments, Chibardun's Petition should be dismissed or denied.

Submitted this 5th day of January, 1998.

BOARDMAN, SUHR, CURRY & FIELD
By



Anita T. Gallucci, State Bar No. 1006728
Rhonda R. Johnson, State Bar No. 1027696
1 South Pinckney Street, Suite 410
P.O. Box 927
Madison, WI 53701-0927
(608) 257-9521
Attorneys for the City of Rice Lake, Wisconsin

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of)	
)	
CHIBARDUN TELEPHONE COOPERATIVE, INC.)	
CTC TELCOM, INC.)	
)	CC Docket No. 97-219
Petition for Preemption Pursuant to)	
Section 253 of the Communications Act --)	
City of Rice Lake, Wisconsin)	
TO: The Commission		

CERTIFICATE OF SERVICE

I, Joan Wentworth, an employee in the law firm of Boardman, Suhr, Curry & Field, hereby certify that on this 5th day of January, 1998, I sent by Federal Express or first-class mail (as indicated below), the foregoing "City of Rice Lake's Rely Comments on Petition for Preemption" to the following individuals:

By Federal Express

Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554


Janice M. Myles
Claudia Pabo
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, D.C. 20554

A. Richard Metzger, Jr., Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

By First-Class Mail

ITS, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

Gerald J. Duffy
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Washington, D.C. 20037



Joan Wentworth